

APPENDIX E TO PART 138—FINANCIAL GUARANTY FORM

FINANCIAL GUARANTY NO. _____

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
CG-5586-3

FINANCIAL GUARANTY FURNISHED AS EVIDENCE OF FINANCIAL
RESPONSIBILITY UNDER THE OIL POLLUTION ACT OF 1990 AND THE
COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION,
AND LIABILITY ACT, AS AMENDED

1. _____,
(Name of Vessel Operator)

the operator of each vessel named in the annexed schedules ("covered vessel"), desires to establish evidence of financial responsibility for the owner, operator, and demise charterer (referred to collectively as "Operator") of each covered vessel in accordance with the Oil Pollution Act of 1990 ("OPA 90") and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") (referred to collectively as the "Acts"). The undersigned Financial Guarantor or Guarantors ("Guarantor") hereby guarantees, subject to the provisions hereof, to discharge the Operator's liability with respect to each covered vessel for costs and damages under section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA, as limited by sections 107(c)(1)(B) and (A), or both, in an amount equal to the total applicable amount determined in accordance with the Applicable Amount Table below. The Operator and the Guarantor agree that if at the time of an incident, release, or threatened release a covered vessel is a tank vessel or is carrying a hazardous substance as cargo, the limit of liability of the Guarantor hereunder shall be the total applicable amount appropriate for such a vessel determined in accordance with the Applicable Amount Table below. The amount and scope of the Guarantor's liability are not further conditioned or dependent in any way upon any contract, agreement, or understanding between the Operator and the Guarantor. The Guarantor shall furnish written notice to the Director, Coast Guard National Pollution Funds Center ("Center"), of all judgments rendered and payments made by the Guarantor under this Financial Guaranty.

2. Any claim, including any claim by right of subrogation, against the Operator for costs and damages arising under either section 1002 of OPA 90 as limited by section 1004(a), or section 107(a)(1) of CERCLA as limited by sections 107(c)(1)(A) and (B), or both, may be brought directly against the Guarantor and the Guarantor consents to suit with respect to these claims. However, in any direct action under OPA 90 the Guarantor's liability per vessel per incident shall not exceed the amount determined under part I of the Applicable Amount Table below and, in any direct action under CERCLA the Guarantor's liability per vessel per release or threatened release shall not exceed the amount determined under part II of the Applicable Amount Table below. The Guarantor shall be entitled to invoke only the

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amount determined under part II of the Applicable Amount Table below. The Guarantor's obligation hereunder with respect to any one incident or release or threatened release shall be reduced by all payments or succession of payments for costs and damages, to one or more claimants, made by or on behalf of the Operator under OPA 90 or CERCLA or both, as applicable, for which the Operator is liable. The Guarantor shall be entitled to invoke only the following rights and defenses in any direct action:

(1) The incident, release, or threatened release was caused by the willful misconduct of the Operator.

(2) Any defense that the Operator may raise under the Acts.

(3) A defense relating to the amount of a claim or claims, filed in any action in any court or other proceeding, that exceeds the amount of this Guaranty with respect to an incident or with respect to a release or threatened release.

(4) A defense relating to the amount of a claim or claims that exceeds the amount of this Guaranty, which amount is based on the gross tonnage of the covered vessel as entered on the Vessel's International Tonnage Certificate or other official, applicable certificate of measurement, except where the guarantor knew or should have known that the applicable certificate was incorrect.

(5) The claim is not one made under either of the Acts.

3. The Guarantor's liability under this Guaranty shall attach only in relation to each incident, release, or threatened release occurring on or after the effective date and before the termination date of this Guaranty. The effective date of this Guaranty for each covered vessel listed below is the date the vessel is named in or added to the schedules below. For each covered vessel, the termination date of the Guaranty is 30 days after the date of receipt by the Center of written notice that the Guarantor has elected to terminate this Guaranty, with respect to any of the covered vessels, and has so notified the vessel Operator identified above on the schedule below. Termination of this Guaranty as to any vessel does not affect the liability of the Guarantor in connection with an incident, release, or threatened release occurring prior to the date the termination becomes effective.

4. If, during the currency of this Guaranty, the Operator requests that a vessel become subject to this Guaranty, and if the Guarantor accedes to that request and so notifies the Center in writing, then that vessel shall be considered included in Schedule B as a covered vessel and subject to this Guaranty.

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5. The Guarantor designates _____
(Name of Agent)
with offices at _____

as the Guarantor's agent in the United States for service of process for purposes of this Guaranty and for receipt of notices of designation and presentations of claims under the Acts. If the designated agent cannot be served due to death, disability or unavailability, the Director, Coast Guard National Pollution Funds Center, is the agent for service of process.

6. No more than four Financial Guarantors may execute this Guaranty. If more than one Guarantor executes this Guaranty, each Guarantor binds itself jointly and severally for the purpose of allowing a joint action or actions against any or all of the Guarantors, and for all other purposes each Guarantor binds itself, jointly and severally with the Operator, for the payment of the percentage of sums only as is set forth opposite the name of the Guarantor. If no limit is indicated for a Guarantor or Guarantors, the liability of such Guarantor or Guarantors shall be joint and several for the total of the unspecified portions.

(Name of Lead Guarantor)
is designated as the lead guarantor having authority to bind all guarantors for actions of guarantors under the Acts, including but not limited to receipt of designation of source, advertisement of a designation, and receipt and settlement of claims (inapplicable if only one Financial Guarantor executes this Guaranty).

7. Title 33 CFR part 138 governs this Financial Guaranty.

EFFECTIVE DATE: _____
(Month/Day/Year and Place of Execution)

(Typed Name of Guarantor)

(Address of Guarantor)

(Percentage of Participation)

By: _____
(Signature)

(Type Name and Title of Person Signing Above)

[NOTE: For each co-Guarantor, provide information in the same manner as for Guarantor above.]

APPLICABLE AMOUNT TABLE

(I) Applicable Amount Under the Oil Pollution Act of 1990

<u>VESSEL TYPE</u>	<u>VESSEL'S GROSS TONS</u>	<u>APPLICABLE AMOUNT</u>
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 300 gross tons* but not to exceed 3,000 gross tons.	The greater of \$2,000,000 or \$1,200 per gross ton.
Tank vessel (except a tank vessel on which no liquid hazardous material in bulk is being carried as cargo or cargo residue, and on which the only oil carried as cargo or cargo residue is an animal fat or vegetable oil, as those terms are used in section 2 of the Edible Oil Regulatory Reform Act (Pub. L. 104-55))	Over 3,000 gross tons.	The greater of \$10,000,000 or \$1,200 per gross ton.
Vessel other than a tank vessel (specified above)	Over 300 gross tons. *	The greater of \$500,000 or \$600 per gross ton.
* This minimum gross ton limit does not apply to any vessel using the waters of the U.S. Exclusive Economic Zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States (as specified in 33 CFR 138.12(a)(1)).		

(II) Applicable Amount Under the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended.

<u>VESSEL TYPE</u>	<u>APPLICABLE AMOUNT</u>
Vessel over 300 gross tons carrying hazardous substance as cargo -----	The greater of \$5,000,000 or \$300 per gross ton. -----
Any other vessel over 300 gross tons	The greater of \$500,000 or \$300 per gross ton.

(III) Total Applicable Amount = Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

Coast Guard, DHS

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SCHEDULE A

VESSELS INITIALLY LISTED

VESSEL

GROSS TONS

OPERATOR

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SCHEDULE B

VESSELS ADDED IN ACCORDANCE WITH CLAUSE 4

<u>VESSEL</u>	<u>GROSS TONS</u>	<u>OPERATOR</u>	<u>DATE ADDED</u>
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[CGD 91-005, 61 FR 9296, Mar. 7, 1996]